FILE COPY

Office-Supreme Court, U.S.
FILED
FEB 6 1959
JAMES R. BROWNING, Clerk

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1958

No. 686

IRVING TAITEL, RUTH TAITEL, and JEROME TAITEL, d b a I. TAITEL & SON, a Partnership,

*Petitioners,*

v.

NATIONAL LABOR RELATIONS BOARD,

*Respondent.*

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

THOMAS M. QUINN,
715 Indiana Building,
Indianapolis 4, Indiana,

GEORGE ROSE,
606 State Life Building,
Indianapolis 4, Indiana,

*Attorneys for Petitioners.*

Central Publishing Co., Inc., Indianapolis, Ind.

# INDEX


| | Page |
|---|---|
| Petition | 1 |
| Jurisdiction | 2 |
| Opinions Below | 2 |
| Questions Presented | 2 |
| Statutes Involved | 2 |
| Statement of the Case | 3 |
| Specification of Errors to be Urged | 5 |
| Basis for Federal Jurisdiction | 5 |
| Reasons Relied on for Granting the Writ | 6 |
| Certificate of Service | 15 |
| Appendix | 16 |


## TABLE OF CITATIONS

*Cases*


| | |
|---|---|
| In re American Rio Grande Land & Irrigation Co. (1937), 21 F. Supp. 492, 495 | 14 |
| In re Bond & Mortgage Guarantee Co. (1935), 283 N. Y. S. 623, 648 | 13 |
| H. J. Heinz v. N.L.R.B. (1940), 110 F. 2d 843, 847 | 8, 13 |
| H. J. Heinz v. N.L.R.B. (1941), 311 U. S. 514, 521 | 9, 12 |
| Jones v. Board of Comm'rs, Franklin County (1902), 42 S. E. 144, 149, 130 N. C. 451, 466 | 13 |
| Marr Knitting, Inc. (1950), 90 N.L.R.B. 479, 480 | 10 |
| N.L.R.B. v. Bird Machine Co. (1947), 161 F. 2d 586, 591 | 10, 13 |

Page

North Carolina Finishing Co. v. N.L.R.B. (1943), 133 F. 2d 714, 716 ..... 11, 13

*Statutes*

Amendment V, Constitution of the United States .. 2, 3, 14

Labor Management Relations Act, 28 U. S. C. Sec. 151, *et seq.* (Sec. 8(a) 1 and 5 ..... 2, 3, 5, 14

28 U. S. C. Sec. 1254(1) ..... 2, 5

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1958.

No. ———

IRVING TAITEL, RUTH TAITEL and JEROME TAITEL, d/b/a I. TAITEL & SON, a Partnership,

*Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD,

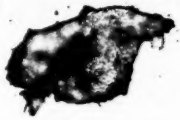
*Respondent.*

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Irving Taitel, Ruth Taitel and Jerome Taitel, doing business as I. Taitel and Son, a Partnership, respectfully prays that a writ of certiorari be issued out of and under the seal of this Court to review the decision



of the United States Court of Appeals for the Seventh Circuit, rendered October 30, 1958, which granted the petition of the National Labor Relations Board for enforcement of its order.

## JURISDICTION

Jurisdiction to review this case upon writ of certiorari is conferred upon this Court by 28 U.S.C. Sec. 1254(1).

## OPINIONS BELOW

The National Labor Relations Board's decision and order are reported at 119 N.L.R.B. No. 124.

The opinion of the United States Court of Appeals for the Seventh Circuit, filed October 30, 1958 (Rehearing denied without opinion, December 22, 1958), has not yet been reported, but is printed in the Appendix.

## QUESTIONS PRESENTED

1. Is the lower court's opinion in conflict with the decisions of this Court and other Courts of Appeals in upholding the National Labor Relations Board's ruling that the petitioner was guilty of interference in violation of Section 8(a)(1) of the Labor Management Relations Act?

2. Is the lower court's failure to consider the petitioner's disavowal and promise not to retaliate against members of the Union a violation of the Fifth Amendment in denying the petitioner due process of law?

## STATUTES INVOLVED

Labor Management Relations Act, 29 U.S.C. Sec. 158 (a)1 and 5, printed in the appendix at p. 23.

Amendment V of the Constitution of the United States printed in the appendix at p. 23.

## STATEMENT OF THE CASE

Charges were filed by the Union against I. Taitel & Son, the petitioner here, claiming that the petitioner had interfered with the rights of the petitioner's employees in violation of Section 8(a)1 and 5 of the Labor Management Relations Act (61 Stat. 136, 29 U.S.C., Sec. 151, et seq.) by threatening to close the plant if the Union organized it, promising one of the leaders of the Union a promotion if he dropped the Union, soliciting assistance of employees to combat the Union, coercive questioning of its employees about the Union, and soliciting employees to abandon the strike and return to work, and that the petitioner had refused to recognize the charging Union as the sole representative of the petitioner's employees when it had been selected by a majority of the employees in the appropriate unit. After a hearing lasting five days, the Trial Examiner upheld the charges in the complaint, and on appeal to the NLRB the Board confirmed the Trial Examiner's findings and recommended order. The General Counsel petitioned the United States Court of Appeals for the Seventh Circuit to enforce the Board's order. That Court heard oral argument on October 9, 1958, and rendered its decision October 30, 1958, which is printed in the appendix at p. 16. A petition for rehearing was filed and denied.

The petitioner is a partnership composed of Irving Taitel, Ruth Taitel and Jerome Taitel, and is engaged in the business of manufacturing men's work clothes, in plants located at Knox and Scottsburg, Indiana; Selma, Alabama, and Drew, Mississippi. It formerly operated a fifth plant at Berne, Indiana, and since this cause began

has closed one of its southern plants, in order to give greater strength to the Knox plant, the plant here involved. Work trousers are manufactured at Knox.

The petitioner has on many occasions during the last several years discussed with its employees the unfavorable economic conditions, the losses it was suffering and the difficulty of keeping the plant open. On March 13, 1956, the Union representatives came in and asked the petitioner for recognition on its cards. As Mr. Irving Taitel, the senior partner, who has charge of labor matters was away, on a selling trip, he was contacted and returned the next day. As he went through the plant on March 14, 1956, he talked with many of the employees about working conditions and the economic difficulties of the petitioner. Three days later, on March 17, 1956, the petitioner, represented by Mr. Irving Taitel, the plant manager and its attorney met with a Union committee, composed of eight employees, and four other representatives. At that time, Mr. Taitel and the attorney denied and disavowed any threats to close the plant or discharge any employees because of union membership and activities, and assured the Union that if the Union was chosen by the employees, the petitioner would bargain with it and would not close down because the employees voted for the Union. At the same time, the parties were unable to agree on an election, as the petitioner believed there had been coercion used in obtaining signed cards, and felt that the Board should hold a hearing and order an election. Immediately after the meeting adjourned, the petitioner's attorney prepared a statement of the petitioner's position, as expressed at the meeting, and a reiteration that the petitioner would not discriminate against or discharge any employees who joined the Union or engaged in union activities; and that it would not close down the

plant if the employees voted for the Union, but would recognize it and bargain with it. This statement was printed as an advertisement in the two newspapers in their next issue. On March 19, 1956, the employees went out on strike until April 10, 1956, when they returned. Soon after the strike began, the petitioner endeavored to resume operations, and sought to persuade some of its employees to return to work. All returned on April 10, 1956, without discrimination. On that day, the petitioner printed a second advertisement reaffirming its disavowal and promise of no reprisal.

## SPECIFICATION OF ERRORS TO BE URGED

The United States Court of Appeals for the Seventh Circuit erred in affirming the decision of the National Labor Relations Board, in holding in conflict with this Court that the petitioner was guilty of interference in violation of Sec. 8(a)1 of the Labor Management Relations Act, 29 U.S.C. Sec. 151, et seq.

The United States Court of Appeals for the Seventh Circuit denied the petitioner due process of law in affirming the decision of the National Labor Relations Board that the petitioner was guilty of interference in violation of the Labor Management Relations Act.

## BASIS FOR FEDERAL JURISDICTION

This is a case involving a conflict between the Court of Appeals for the 7th Circuit and the decisions of this Court, and the decisions of the First, Fourth and Sixth Courts of Appeals, as well as the constitutional question of due process. This is a suit appealed under the jurisdiction of 28 U.S.C. Sec. 1254(1).

## REASONS RELIED ON FOR GRANTING THE WRIT

This is an important question before this Court, whether this Court was right, in holding that an employer, apparently guilty of interfering with his employees' rights as to union activities, by making threats of reprisal, but who recognizes his error, and publishes to his employees his disavowal and his promise not to engage in reprisal against them because of their activities, is able by such disavowal and promise to clear the atmosphere so that the employees are free to engage in such activities without fear. The lower court in effect said that there is no place of penitence, by ignoring the disavowal, but this Court recognized that such a frank statement disavowing any threats does give the employees that necessary freedom. In this particular situation, the acts occurred on March 14, 1956, and three days later, the employer clearly disclaimed any intent to intimidate. There was no discharge or discriminatory conduct in the case.

The second point involves the important question of whether the petitioner was accorded due process of law in the conduct of the lower tribunals in ignoring, while not rejecting for valid reasons, the important evidence of the petitioner's disavowal and promise of no reprisal, published to his employees, as to their union activities.

1. The petitioner's senior partner, Mr. Irving Taitel, upon his return to the plant in Knox, Indiana, on March 14, 1956, having been advised that the Union claimed to represent a majority of the employees, talked with his employees as he went over the plant. It was alleged that he engaged in interference, in violation of Sec. 8(a)1 of the Labor Management Relations Act, by threatening to close down the plant, if the Union organized it, promising

one of the leaders of the Union a promotion if he dropped the Union, soliciting the assistance of employees to combat the Union, coercive questioning of the employees about the Union, and soliciting employees to abandon the strike and return to work. This last act would only be an unfair labor practice if the other acts constituted interference. Three days later, the petitioner met with the Union committee, and discussed recognition and an election. At that time Mr. Taitel and the petitioner's attorney disavowed any threats as to the union membership or union organization and assured the employees that if the Union were chosen by the employees, the petitioner would recognize it and deal with it. After the meeting, the petitioner's attorney prepared a statement as to the petitioner's position, seeking to incorporate the sense of what had been stated at the meeting. Whether or not it did fully do this, it was a clear, unambiguous statement of intent to remain neutral, to the extent of allowing the employees freely to decide for themselves their union association. This statement (printed in respondent below's appendix, Exhibit 1) was then published in the next issues of both of the local papers, as a paid advertisement, and distributed to the employees then on strike. Virtually all of the employees who testified, amounting to a majority of the employees, stated that they had seen the statement and had read it. On April 10, 1956, the petitioner printed a reaffirmation of its disavowal and promise of no reprisal. (Printed in respondent below's appendix Exhibit No. 2.)

In the Trial Examiner's Report there was no mention of any disavowal or promise of no reprisal being made either at the meeting of March 17, 1956, or in the published statements. The Trial Examiner had the right to appraise or evaluate the statement. He might have stated he did not believe the petitioner or its attorney had made such

statements, or that he did not believe it was published as contended, although it would be a little fantastic so to state, such an unquestioned fact conceded by all the witnesses, but he did not. No, the Trial Examiner chose to ignore this statement, but he referred to an explanation it contained, as to the petitioner's refusal to agree to an election as an "afterthought," since there was some dispute as to what the representatives of the petitioner had stated at the meeting, that it refused to agree to an election, because the Union made threats to and coerced the employees to force them to join the Union, but he disregarded the existence of any disavowal.

The National Labor Relations Board, in affirming the Trial Examiner's Report, similarly brushed off such an important statement published by the petitioner without comment.

The Court of Appeals at the oral argument questioned the parties as to their understanding of the effect of such disavowal and promise, but in its opinion there is no mention of it. Apparently, it took the position that such a disavowal and promise of no retaliation had no significance, since it did not condescend even verbally to brush it aside.

In this, the lower court stands in direct conflict with this Court and at least three Courts of Appeals. The Court of Appeals for the 6th Circuit, in *H. J. Heinz v. NLRB* (1940), 110 F. 2d 843, 847, in which case supervisory employees questioned employees about the Union and disparaged it, said:

> "There was no evidence that petitioner directed any supervisory employee to communicate its alleged neutrality to the employees. If petitioner had really wanted its employees to know that they might with safety join whichever union they desired, the bulletin

> boards were the obvious and because direct, the most effective means of assuring them of its impartiality."

On appeal to this Court (1941), 311 U. S. 514, 521, this Court said:

> "This is the more so here where petitioner, when advised of the participation of his supervisory employees in the organization campaign, took no step, so far as appears, to notify the employees that those activities were unauthorized, or to correct the impression of the employees that support of the Union was not favored by the petitioner and would result in reprisals."

In our case, the petitioner took all the steps necessary to make clear to the employees that they were free to engage in union activities, and that it would not commit any reprisals against them. In the case quoted, the petitioner "took no step," but here the petitioner sought "to correct the impression of the employees that support of the Union was not favored by the petitioner and would result in reprisals," since some of its conduct was alleged to have amounted to improper interference. Posting its position on the bulletin board would not have reached the employees since the plant was on strike the following Monday, so it published its statement in the newspapers and saw that all of the employees had a copy, as well as expressing its position at the Union committee meeting where eight of its employees were present.

The Board and the lower court leaned entirely on cases where there had been alleged interference, but in none of them had the employer disavowed such conduct or published widely to the employees his intent to be neutral or promise of no reprisal, nor was there any contention by the respondents that such had been done. For, as these

cases show, and this Court emphatically expressed, the disavowal and promise of no reprisal made public to the body of employees, was of very important character. Consequently these decisions are based on facts entirely at variance wth the facts of the present case, since this Court considered the disavowal published to the employees of significant moment.

Unfortunately, neither the Board not the lower court followed the guide of the only Board case which we were able to find, where the facts are so close as to these, which clearly follows the pattern of legal thinking in line with this Court's unambiguous decision. In that case, *Mari Knitting, Inc.* (1950), 90 NLRB 479, 480, where threats to close the plant down were made by supervisory officials, if the Union succeeded in organizing the employees, the president of the employer a week later told the employees that this rumor was false, and put a notice on the bulletin board. There the Board held that the statement of the president of the employer that the rumors were false was

> "sufficient to counteract the effect of" (the plant manager's) "coercive statements and assure the employees that they were free to engage in union activities without fear of reprisal."

In *N.L.R.B.* v. *Bird Machine Co.* (1947), 161 F. 2d 586, 591, where disparaging remarks and threats of economic reprisal and loss of privileges were made by supervisory personnel, with regard to union activity, the Court of Appeals for the First Circuit said:

> "Had the employer posted notices to the effect of the instructions given the foremen, or otherwise communicated this information to the employees, the remarks of the foremen might have been shorn of their coercive effect."

Here we have no comment by the Trial Examiner, the Board or the Court of Appeals that the petitioner had failed to make clear his position, that the publication was inadequate, that the disavowal was not specific enough, or that it came too late, none of which of course would be true, but at least would offer an explanation for not accepting it, instead of ignoring it. If this Court thought it important enough, to point out that the failure of the employer to take steps to notify the employees to correct the impression of the employees that support of the Union was not favored, the failure of the Court of Appeals to consider these acts of the petitioner, endeavoring to dissipate and undo any mistakes or excessive concern it had for the survival of its business, lest further economic burdens brought by the Union prove too heavy, was in conflict with this Court and the First, Fourth and Sixth Courts of Appeals.

In *North Carolina Finishing Co. v. N.L.R.B.* (1943), 133 F. 2d 714, 716, where supervisory officials had made anti-union statements, the Court of Appeals for the Fourth Circuit said:

> "The remarks may have been unauthorized by the Company but we must remember that Robertson's instructions to the overseers were never directly communicated to the subordinate employees. Accordingly, the hundreds of employees under the supervision of Boston and Walser could have reasonably believed that the second hands were speaking for the management, and this affords a sufficient basis for liability under the Act."

These decisions demonstrate the conflict between them and the present case, for there this Court and the Courts of Appeals regarded as important the presence or absence of the disavowal and promise of no reprisal from the em-

ployer who previously had erred on the side of interference, and as destroying its coercive effect, while the Court of Appeals for the 7th Circuit did not even consider the petitioner's forthright effort to make clear to its employees that they might participate in union activities and membership without fear of reprisal.

2. In discussing the facts in *H. J. Heinz v. N.L.R.B.* (1941), 311 U. S. 514, 521, where employees had been questioned about the Union, which had been disparaged, this Court indicated that the employer was charged with responsibility for this conduct in view of the employer's failure to take steps to inform the employees that they might with safety join whichever union they desired. The disavowal and promise of no reprisal was therefore clearly important, because as this Court plainly indicates, in view of the absence of such disavowal made public to the employees, the employer stood charged with improper interference. It is an essential matter which must be considered in determining whether the petitioner was guilty of interference. The Trial Examiner as the trier of the facts could clearly appraise the disavowal and promise, and decide that it was defective, or lacking in clarity or not sufficiently broad, or came too late, or was evasive, if such were the facts. However, here the Trial Examiner ignored its existence. There might not have been such a disavowal so far as any references by the lower tribunals are concerned, except for the fact that it is in the exhibits, and its existence is not contested, and the Trial Examiner does mention part of it, dealing with the petitioner's refusal to accept the union designation cards. Obviously, the Trial Examiner did not even consider the disavowal, for such an important circumstance which this Court held was necessary to establish the employer's freedom from interference, and whose lack placed the responsibility for improper conduct upon

the employer, but which was present in this case, could not be brushed aside without comment since its presence changed the character of the alleged conduct. It is like a criminal case where the evidence shows that the victim was shot, and bled profusely, and died, but the evidence fails to mention that his death had no connection with his wound. The Trial Examiner could not presume to act as if this phase were not a part of the case, for when it is such a substantial element, as indicated by this Court and other Courts of Appeals (*N.L.R.B. v. Bird Machine Co.* (1947), 161 2d 586, 591; *North Carolina Finishing Co. v. N.L.R.B.* (1943), 133 F. 2d 714, 716; *H. J. Heinz Co. v. N.L.R.B.* (1940), 110 F. 2d 843, 847), the Trial Examiner must recognize it, and consider it, or the petitioner has been denied "due process of law."

The courts all hold that the term "due process of law" cannot be and should not be closely confined and defined. In each case, the facts must be appraised to determine whether there was due process. There is general agreement as to what it requires. In *Jones v. Board of Comm'rs. Franklin County* (1902), 42 S. E. 144, 149; 130 N. C. 451, 466, the court described it as being:

> "an orderly proceeding, adapted to the nature of the case in which the citizen has an opportunity to be heard, and to defend, enforce and protect his rights."

The court in *In re Bond & Mortgage Guarantee Co.* (1935), 283 N. Y. S. 623, 648, described it clearly, saying,

> " 'Due process of law' requires an orderly proceeding adapted to the nature of the case in which the citizen has an opportunity to be heard, and to defend, enforce, and protect his rights. A hearing or an opportunity to be heard, is absolutely essential. We cannot conceive of due process of law without this."

From these cases, it is clear that an essential part of due process is the opportunity to be heard. The citizen must have a hearing. A failure to provide a hearing is not due process. However, it is equally clear, as the courts quoted from above indicate, due process of law is not attained merely by a formal hearing, with a chance to be heard. If the tribunal hears the evidence, but ignores it, the hearing has been fruitless. If the evidence is not rejected for essential weaknesses, making it unreliable or unworthy of belief, as it was not rejected in this case, or if it is a minor or insubstantial point, which would not change the result, if it had been considered, as it was not an unimportant matter in this case, but it was obviously ignored, for some reason or no reason, we are not informed, the evidence must be considered and weighed for otherwise there is no due process of law.

In *In re American Rio Grande Land & Irrigation Co.* (1937), 21 F. Supp. 492, 495, the federal district court in Texas said,

> "'due process' * * * includes and means an opportunity to be heard and a resultant action in conformity with the truth deduced at such hearing."

It is therefore plain that in this case, the proceedings lacked due process of law, beginning with the Trial Examiner's report, and the failure of the Board and the lower court to reject the Trial Examiner's finding. Therefore, the petitioner has been denied the protection of the Fifth Amendment by the Board's action in finding the petitioner guilty of a violation of Sec. 8(a)1 of the Labor Management Relations Act.

If we are correct in our contentions as to these two questions, then it must follow that the Board's determination a-

to the violation of Sec. 8(a)5 of the Act must also be set aside.

It is respectfully submitted that there is here presented a proper occasion for the exercise of the supervisory power of this Court to reverse the lower court.

Thomas M. Quinn,
715 Indiana Building,
Indianapolis 4, Indiana.

George Rose,
606 State Life Building,
Indianapolis 4, Indiana.

Attorneys for Petitioner.

January 28, 1959.

**Certificate of Service**

I, Thomas M. Quinn (below signed), one of the attorneys for I. Taitel & Son, petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on January 28, 1959, I served a copy of the foregoing Petition for Writ of Certiorari on the respondent, by mailing by first class mail addressed to counsel, Thomas J. McDermott, Associate General Counsel, National Labor Relations Board, Washington 25, D. C.

Thomas M. Quinn.

## APPENDIX

IN THE

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

---

No. 12335 SEPTEMBER TERM AND SESSION, 1958

---

| | |
|---|---|
| NATIONAL LABOR RELATIONS BOARD, *Petitioner*, v. IRVING TAITEL, RUTH TAITEL and JEROME TAITEL d/b/a I. TAITEL AND SON, a Partnership, *Respondent*. | On Petition for Enforcement of an Order of the National Labor Relations Board. |

---

October 30, 1958

---

*Before* DUFFY, *Chief Judge*, and HASTINGS, *Circuit Judge*, and WHAM, *District Judge*.

HASTINGS, *Circuit Judge*. This case comes before us upon the petition of the National Labor Relations Board pursuant to Section 10(e) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C.A. §§ 151 *et seq.*) for

enforcement of its order[1] issued against respondent[2] on December 14, 1957, following the usual proceedings under Section 10 of the Act.

In substance, the Board found that respondent interfered with, restrained and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act by threats to employees that it would close its plant if the union succeeded in organizing its employees; by offering a supervisory job to an employee if he abandoned his union activities; by unlawful interrogation of employees and solicitation of their assistance to combat the union's efforts to organize the plant; and by the solicitation of employees to abandon a strike, called by the union after respondent had refused to bargain. The Board further determined that the union represented a majority of respondent's employees in the unit found to be appropriate at the time of the alleged violations, and that, in denying the union's request for recognition and insisting upon a Board ordered election, respondent was not motivated by any good faith doubt as to the union's majority status, but was moved by a desire to gain time in which to undermine the union and dissipate its strength, thereby violating Section 8(a)(5) of the Act.

To remedy the foregoing, the Board ordered respondent to cease and desist from the unfair labor practices found and from, in any other manner, interfering with its employees' rights guaranteed in Section 7 of the Act. It affirmatively ordered respondent to bargain collectively with the union upon request to do so and to post the appropriate notices.

---

[1] The Board's decision and order are reported at 119 N.L.R.B. No. 124.

[2] Respondent is Irving Taitel, Ruth Taitel and Jerome Taitel d/b/a I. Taitel and Son, a partnership. Respondent is engaged in the manufacture, sale and distribution of trousers and jackets at Knox, Indiana, where the alleged unfair labor practices occurred. It is admitted that respondent is engaged in commerce within the meaning of the Act.

[3] General Teamsters, Chauffeurs and Helpers Union, Local 298, I.B.T. & H. of A.

The contested issue is whether there is substantial evidence in the record as a whole to support the several findings of the Board as above set out.

Since respondent's contentions are predicated solely upon the question of the sufficiency of the evidence on the record as a whole to support the Board's findings, we seem required again to state "that the Act vests in the Board, and not in the courts of review, the duty of appraising conflicting evidence, drawing inferences from established facts and circumstances, and resolving issues of fact," and that our function "is limited to determining whether there was substantial evidence to support the Board's findings of fact," and that if there was then "these findings cannot be disturbed on review." *National Labor Relations Board v. Aintree Corporation*, 7 Cir., 132 F. 2d 469, 472 (1942). We are not, however, to take lightly the warning of Judge Major in his dissenting opinion in that case (at page 473), that, in following such a rule, courts of appeal are not to be mere rubber stamps, there still remaining the necessity for a solid foundation of proof to be found in the record. As Judge Lindley stated in *National Labor Relations Board v. Wagner Iron Works, etc.*, 7 Cir., 220 F. 2d 126, 133, cert. den., 350 U.S. 984 (1955): "Ultimately whether enforcement is to be decreed depends primarily on whether the findings are supported by substantial evidence 'when viewed in the light that the record in its entirety furnishes,'" citing *Universal Camera Corp. v. National Labor Relations Board*, 340 U.S. 474, 488.

The record fairly and adequately establishes that, during the interval between the union's request for recognition and the first meeting between respondent and the union, and during the progress of the strike following nonrecognition, respondent engaged in the tactics above found by the Board to constitute interference with and restraint and coercion of its employees in their exercise of the rights guaranteed them under Section 7 of the Act. We see no point in burdening this opinion by reciting the testimony which gives rise to our conclusion as to its sufficiency.

This court has held rather decisively that such conduct on the part of an employer is in violation of Section 8(a)(1) of the Act. Threats to close a plant if the union succeeds, *National Labor Relations Board v. Aintree Corporation, supra;* threats of reprisal and promise of benefits for repudiating union, *National Labor Relations Board v. Popeil Brothers*, 7 Cir., 216 F. 2d 66, 67-68 (1954); coercive interrogation of employees as to their union activities and membership, *National Labor Relations Board v. Waquoit Iron Works, etc., supra; Indiana Metal Products Corp. v. National Labor Relations Board*, 7 Cir., 202 F. 2d 613, 619-620 (1953); solicitation of employees to combat the union and to break a strike called for unfair labor practices, *National Labor Relations Board v. Bradley Washfountain Co.*, 7 Cir., 192 F. 2d 144, 152-153 (1951), have all been held to be in violation of Section 8 (a)(1).

The record shows that on the critical date there were 96 employees in the unit for which recognition was sought, making 49 employees a majority. It further shows that employees in the unit executed authorization cards which were identified and introduced in evidence at the hearing. Respondent refused to check the signatures on these cards when requested to do so at its first meeting with the union, and at the hearing it did not contest their genuineness. Respondent did, however, contend that the signed cards reflected a coerced majority because the union waived initiation fees for all employees who joined while the union was being organized and represented it would charge a fee of $25 for those who joined later. A union may be designated as a bargaining representative by the signing of authorization cards, *National Labor Relations Board v. Geigy Co., Inc.*, 9 Cir., 211 F. 2d 553, 556 (1954); *Reliance Mfg Co. v. National Labor Relations Board*, 7 Cir., 125 F. 2d 311, 314-315 (1952); and the waiving of the fees during the organizational period does not smack of coercion but rather of promotional persuasion. The testimony of the employees lends no color to a finding that their signatures were other than voluntary. To be considered also is the fact that a substantial majority of the employees supported the unfair labor practices strike. We hold that

there was substantial evidence to support the Board's finding that, at the time of its request for recognition, the union represented a majority of the employees in an appropriate unit. *National Labor Relations Board* v. *Dahlstrom Metallic Door Co.*, 2 Cir., 112 F. 2d 756 (1940).

Finally, was the refusal of the employer to recognize the union predicated upon a good faith doubt as to the union's majority status, or was it motivated by a desire to gain time to undermine the union and dissipate its strength? Since respondent vigorously contends that there was no substantial evidence that it was acting other than in good faith in seeking a Board ordered election as the alternative to the showing of majority status on the card count, we shall consider the findings made on that proposition.

At the first meeting between respondent and the union when recognition was requested, the record establishes the following: When its majority representation was questioned, the union offered the signed cards for checking and respondent refused. Respondent requested the union to make known its bargaining demands, and the union refused to do so until it was granted recognition, whereupon respondent offered to open its books to show its alleged weak financial condition and inability to meet any demand for pay increases. Respondent demanded a Board ordered election, and the union suggested an election either under state supervision or by supervision of a neutral party and this was rejected. Respondent then rejected an offer to enter into an agreement for a consent election to be conducted by the Board but assigned no reason for insisting on a Board ordered election. The meeting was then ended and two days later the strike for recognition began. The strike was in progress from March 19, 1956 until April 10, 1956 when the employees returned to work. The strike was supported by a majority of the employees in the bargaining unit. On March 20, 1956 respondent for the first time, in a published newspaper advertisement, assigned as its reason for refusing recognition the issue of waiver of payment of union dues. On April 26, 1956 the union

again demanded recognition and requested respondent to bargain, and to this respondent failed to reply. These circumstances, coupled with the unfair labor practices heretofore found to have occurred prior to the first meeting of the parties, afford substantial evidence to support the finding of the Trial Examiner and the Board on this issue adversely to respondent and their conclusion that respondent was in violation of Section 8(a)(5) of the Act. *Franks Bros. Co.* v. *National Labor Relations Board*, 321 U.S. 702 (1944); *National Labor Relations Board* v. *Chicago Apparatus Co.*, 7 Cir., 116 F. 2d 753, 758-759 (1940); *National Labor Relations Board* v. *Clearfield Cheese Co., Inc.*, 3 Cir., 213 F. 2d 70, 74 (1954).

It is clear that "an employer may rightfully withhold recognition from a union possessed of majority status and request an election to confirm its accreditation if there is a *bona fide* doubt of a majority. Where the refusal is merely to afford time to take action to dissipate the majority, it constitutes a violation of the duty to bargain set forth in Section 8(a)(5) of the Act * * * (citations omitted) * * *." *National Labor Relations Board* v. *Epstein*, 3 Cir., 203 F. 2d 482, 484 (1953). In the instant case it should be remembered that most of the actions under review occurred contemporaneously with the union organization campaign. Under such circumstances, respondent's unfair labor practices can hardly be divorced from its attitude of nonrecognition.

The petition of the Board for enforcement of its order is granted, and the Board's order will be enforced.

A true Copy:

Teste:

.....

*Clerk of the United States Court of Appeals for the Seventh Circuit.*

USCA 3006 The Scheffer Press, Inc., Chicago, Illinois—10-30-58—135

## AMENDMENT V.

## CONSTITUTION OF THE UNITED STATES

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

## Labor Management Relations Act

[29 U. S. C. Sec. 158]

"UNFAIR LABOR PRACTICES

"SEC. 8. (a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;"

"(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a)."

THOMAS M. QUINN,
715 Indiana Building,
Indianapolis 4, Indiana,

GEORGE ROSE,
606 State Life Building,
Indianapolis 4, Indiana,

*Attorneys for Petitioner.*